

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 16-cv-5688

INVENTIST, INC.,

Plaintiff,

v.

NINEBOT, INC., *et al.*,

Defendants.

**ORDER MEMORIALIZING
PRETRIAL CONFERENCE RULINGS**

The Court held a pretrial conference on the record with counsel on July 25, 2024. The following rulings were issued, for the reasons as stated on the record:

- Deposition Designations
 - Zhongyuan Chen – objections overruled
 - Wenyang Qiao – objections sustained
 - Lei Liu – objections overruled
 - Fuhua Chai – objections to 7:20 – 8:14 sustained; objections to 15:16 – 16:14 overruled
 - Shane Chen – 86:4 – 70:12 [sic] overruled
 - Daniel Wood – objections sustained
 - Shane Chen, May 17, 2023 – the Court reviewed this deposition post-hearing and the objections are sustained

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- Witnesses

- Lei Liu, Wanyang Qiao, Fuhua Chai, Zhongyuan Chen – no repetitive witnesses allowed; pick one or two only as needed; may appear by Zoom. No testimony shall be allowed on the subject of inventorship, which has already been ruled on by the Court. No non-infringing substitutes having been shown to be available for sale during the infringement period, no testimony will be permitted on this subject.
- Daniel Wood – objections sustained.
- Azamad Sultanov – objections sustained
- Document Authentication witness – should not be required; may renew proffer of witness if needed.

- Exhibits

- Plaintiffs' exhibits objected to by Defendants:
 - Article exhibits P68-73 – objection sustained; may renew proffer if expert's basis of knowledge is questioned
 - Pictures exhibits P13, 21, 39 – objections sustained
 - Pleadings exhibits P20, 51 – objections sustained
 - Sales information exhibits P34, 35, 65 & 74 – objections overruled
 - Sales information exhibits P40, 42, 44, 46, 47 withdrawn; P45 objections overruled
- Defendants' exhibits objected to by Plaintiffs:
 - Patent publication exhibits D1-6, D15 – objections sustained
 - Physical devices D89, 91 – demonstratives; objections overruled
 - Pictures/websites exhibits D7-12 – objections overruled; may use to show different models rather than physical devices; D49 – objections overruled
 - Pictures/websites exhibits D5, D82, D83-88, D90 – objections sustained

- Sales information exhibits D13, 39, 48 – the Court believes this was not discussed. If counsel cannot come to agreement on these exhibits, a separate conference will be scheduled to review them.
- Dealer agreements exhibits D16-38 – the Court believes this was not discussed. If counsel cannot come to agreement on these exhibits, a separate conference will be scheduled to review them.

- Identified Issues of Law

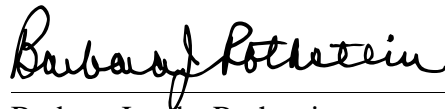
- Non-infringing substitutes not on sale during period of infringement – since there has been no timely evidence of availability during the relevant time period, any proposed evidence is excluded.
- Relevance of marking after lawsuit filed / Notice of infringement – the parties shall file short briefs (no more than 2-3 pages) on or before Friday, July 28, 2023, and the Court will issue a ruling.
- Claim construction for design patents – the Court will not read a claim construction summary to the jury; the fact finder must apply the ordinary observer test.
- Inventist’s lost profits claim with respect to the ‘250 utility patent – the Court has already held that this theory may be presented to the jury. *See* ECF No. 154 at 24.
- The article of manufacture that is the basis for Inventist’s claim for lost profits includes the entire Solowheel device as discussed.
- Disgorgement – the Court will submit the disgorgement of profits claim to the jury and treat the disgorgement verdict as advisory.

- General Trial Details

- Trial will commence with jury selection on Monday, August 14, 2023. Six-seven jurors will be selected. The trial will be held in the Seattle courthouse (courtroom to be determined).
- Trial will run from 9:00 a.m. to 4:30 p.m.
- All exhibits must be pre-marked and will be pre-admitted, but only those used during the trial will be given to the jury.
- Stipulated facts will be read to the jury.

- The parties shall provide two revised agreed paragraph descriptions of the case—one for the voir dire description; the other for the empaneled jury.
- The parties agreed that all evidence will be presented to the jury with no bifurcation.

DATED this 26th day of July, 2023.



Barbara Jacobs Rothstein
U.S. District Court Judge